

§ 386.37 Discovery methods.

Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge orders otherwise, the frequency or sequence of these methods is not limited.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, § 386.37 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 386.37 Discovery.

(a) Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; request for production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery may not commence until the matter is pending before the Assistant Administrator or referred to the Office of Hearings.

(c) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, or by the Assistant Administrator or Administrative Law Judge, in the absence of specific Agency provisions or regulations, the Federal Rules of Civil Procedure may serve as guidance in administrative adjudications.

§ 386.38 Scope of discovery.

(a) Unless otherwise limited by order of the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge, in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated

to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Assistant Administrator or the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 386.39 Protective orders.

Upon motion by a party or other person from whom discovery is sought, and for good cause shown, the Assistant Administrator or the administrative law judge, if one has been appointed, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) The discovery not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(e) Discovery be conducted with no one present except persons designated by the Assistant Administrator or the administrative law judge; or

(f) A trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way.